IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24/03/2004

CORAM

THE HON'BLE MR.JUSTICE A.K.RAJAN

CRL.A.NO.1095 OF 2000

Travel Agents Association of India (TAAI)
rep by Mr. CK Ashok
Having their Office at
C/o. PEGASUS TRAVELS & TOURS PVT. LTD.,
Elcanso Building, 1st Floor
10, Casa Major Road
Egmore
Chennai 600 008. ..Appellant

-Vs-

1. EASTMAN TRAVEL AND TOURS (M) PVT. LTD.
Sujatha Centre, First Floor
4, Seshadri Road
Alwarpet
Chenai 18.

2. AB Vijieraghavan, M.D.,
East Man Travel and Tours (Madras) Pvt. Ltd,
Sujatha Centre, First Floor
4, Seshadri Road, Alwarpet
Chennai 18. ..Respondents

Criminal Appeal filed against the order of acquittal passed by the XIII Metropolitan Magistrate, Egmore, Chennai, in CC.No.8495 of 1998 dated 20.9.2000.

!For Appellant : Mr. C.N.Niranjan

^For Respondents : Mr. K.Moorthy

:J U D G M E N T

This is an appeal against the order of acquittal for an offence under Section 138 of the Negotiable Instruments Act.

2. The impugned order reveals that the complainant was not present on a number of days; petitions under Section 256 CrPC were filed, and the case was adjourned. Even thereafter, for four consecutive hearings, i.e.

on 2.8.2000, 16.8.2000, 6.9.2000 and 20.9.2000, neither the complainant nor his counsel was present. The matter was adjourned to 2.8.2000 for arguments; on 2.8.2000 as well as on the subsequent dates of hearing on 16.8.2000, 6.9.2000 also there was no representation for the complainant. Finally, the matter was adjourned to 20.9.2000. Even, on that date, there was no representation for the appellant herein. Therefore, the accused was acquitted exercising power under Section 256(1) CrPC.

3. Aggrieved against the said order, the present appeal has been filed.

4. The learned counsel for the appellant/complainant submitted that there was nothing for the appellant to present on the aforesaid dates since he has already adduced evidence. More over, since it is a summon case, order should have been passed based on the evidence available on records, and the matter need not have to be posted for arguments.

5. The learned counsel for the respondents/accused submitted that though the order of acquittal may not be legal for the absence on single day by the appellant, the appellant herein was absent continuously and therefore the order passed by the lower Court cannot be set aside. In support of his contention, the learned counsel referred to the judgment of the Bombay High Court in M/s. HOTEL BANDRA INTERNATIONAL (P) LTD. v.. BRIJ MEHRA [2004 CRI.L.J.143]. In that appeal the Bombay High Court dismissed the case stating that the ratio of the judgment of the Supreme Court in Mohd. Azeem v.. Venkatesh, (2002) 8 SCALE 331 (SC) : 2003 Bom Cr (Cri) 146 case would not applicable to the facts of that case. The argument of the learned counsel for the respondents that the ratio laid down by the Supreme Court in Mohd. Azeem'S case is not applicable to the facts of the present case, is acceptable.

6. But, at the same time, the arguments of the learned counsel for the appellant that the appellant had nothing to do on the said dates since he has closed his evidence, and that since this is a summon case, the Court should have passed orders on the basis of the evidence available on records and that there was no need for posting it for arguments, are acceptable. As per S.314 CrPC, any party to a proceeding may address oral arguments. If the party does not address arguments, a Magistrate or a Judge shall pass judgment based on the evidence. Since the appellant has closed his evidence and the respondents did not want to examine any witness, the lower Court, instead of dismissing the case for non-appearance of the appellant, should have passed orders on the basis of the evidence available on records. Therefore, the order of the lower Court dismissing the complaint on the ground of non-appearance and acquitting the respondents is not legally sustainable. Hence the same is liable to be set aside and it is set aside.

7. In the result, the criminal appeal is allowed and the matter is remitted back to the trial Court for passing orders on the basis of the evidence available on records, within two months. The petitioner and respondents shall be given opportunity to putforth their case, if they so desire, by filing an application for that, before passing orders.

Index: Yes
Internet: Yes
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To
1.The XIII M.M., Egmore, Chennai.
2.The Public Prosecutor, High Court, Madras.